February 27, 2017

Chair Karl Longley
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706

Re: Comments on Waste Discharge Requirement General Orders for Oil Field Discharges to Land

Dear Chair Longley,

The undersigned groups submit these comments on the Central Valley Regional Water Quality Control Board's (Board) Waste Discharge Requirements General Order[s] for Oil Field Discharges to Land" (hereinafter called the Orders).

We appreciate the Board's effort to address the historic problem of hundreds of unpermitted oil wastewater pits and their adverse impacts on water quality, and we offer numerous recommended changes that must be made to the orders to make them more protective.

General Order One

The following comments on the revised general orders are referenced by the section number of General Order Number One, and pertain to other orders if applicable.

1.b. The contaminant thresholds for qualifying for this order must be expanded. Simply using EC, Chloride, and Boron is inadequate. In order to qualify under General Order 1, produced water must contain below safe harbor limits for Proposition 65 chemicals, and also contain below long-term Effects Screening Levels for any other

harmful chemical, either those added in production and maintenance or naturally occurring in the formation fluid.

4. We support the applicability of the General Orders to "outdated WDRs." In addition to applying the requirements of these general orders to wastewater discharges to land that do not have a WDR permit, we recommend that the Board require all "outdated" existing WDR's to be updated to meet the requirements of the General Orders. The current language appears to make updating outdated WDRs optional, leaving hundreds of pits operating with WDRs that are potentially not protective of water quality.

   In order to clarify this section, "outdated" must be defined. We recommend the adoption of the Tulare Lake Basin Plan in 1975 as the cutoff date to determine whether a WDR is outdated or not. According to an analysis of the inventory of pits provided by the Board in 2015, 247 (46.4%) of the 532 active permitted pits in the Central Valley received WDRs prior to 1975.[1] We recommend that all of the WDRs issued prior to 1975 be categorized as "outdated" and be required to comply with the General Orders on the same compliance schedule as unpermitted facilities. For WDRs issued after 1975 we recommend that they eventually be updated to meet the requirements of the General Orders, however acknowledge that updated the outdated WDRs and issuing WDRs for pits that are unpermitted should be the immediate priority.

35. Time Schedule for compliance with Monitoring and Reporting Program for small operators should be the same as for larger operators.

36. We object to this section. Degradation can only be justified by the determination that it is beneficial to the people of the state. A blanket statement that oil production is a benefit does not address the specific activity that would be causing degradation.

46. References to the CCST Study, should include the relevant recommendation that states:
   "Recommendation 4.1. Ensure safe disposal of produced water in percolation pits with appropriate testing and treatment or phase out this practice.

   "Agencies with jurisdiction should promptly ensure through appropriate testing that the water discharged into percolation pits does not contain hazardous amounts of

[1] Grinberg, Andrew "Still In The Pits" Clean Water Action/Clean Water Fund. March 2016. Available online at: http://bit.ly/StillInThePits

chemicals related to hydraulic fracturing as well as **other phases of oil and gas development.** (Bold added for emphasis) If the presence of hazardous concentrations of chemicals cannot be ruled out, they should phase out the practice of discharging produced water into percolation pits." [2]

47. We oppose the time schedule contained in this section. It does not comply with existing regulations, which prohibit discharging wastewater from well that have been stimulated into pits (as required by SB 4, implementation began in July 2015). By providing dischargers three years to "develop an alternate disposal method or demonstrate that the produced wastewater does not contain well stimulation treatment (WST) fluids or related wastes," the order does not agree with DOGGR's regulations.

    It would allow for discharge of well stimulation fluids for up to three years. Previous drafts of the General Orders were more protective of water quality and the full prohibition should be returned.

    The three-year grace period would allow dischargers to regress to again dump WST fluids in pits in violation of existing regulations.

    For wells that were stimulated prior to the reporting period under SB 4, operators should find alternative disposal options if they currently discharge to land. This is the only way to make the General Orders agree with DOGGR regulations. The current language invites confusion and violations.

    The following language is inappropriate: "...a time schedule is necessary to allow the Discharger to comply with the prohibition without imposing an unnecessary economic burden."

    The oil industry is the most profitable on earth, largely because they don't bear the costs of numerous externalities. The prohibition on dumping WST fluids in pits is a measure to protect the environment and have industry bear at least some externality costs. In the likely event that industry again starts dumping WST fluids in pits, the Board would rightly be seen as aiding industry at the expense of the environment and public health.

[2] California Council on Science and Technology "An Independent Scientific Assessment of Well Stimulation in California" July 2015, Executive Summary p. 8

This section should be amended to: “This General Order contains a prohibition for the discharge of produced water that contains well stimulation fluids or related waste. To insure compliance with this prohibition, and in accordance with CCR, Title14 section 1786 of DOGGR’s SB 4 regulations on well stimulation, fluids from wells that have undergone a well stimulation treatment shall not be discharged onto land, including into pits.”

48. We support this section, and it justifies the amendment proposed to Section 47 suggested above.

50. We strongly oppose the addition of the term "where appropriate" in the following: "This General Order promotes that policy (i.e. that every human being has the right to safe, clean, affordable, and accessible water) by requiring discharges, *where appropriate*, to ensure that groundwater meets maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use." That term is vague and it's not clear how that is to be defined, which can result in loophole for dischargers. We recommend that the term be deleted.

53. The italicized portions of this section are vague and need to be defined to prevent abuse:
"...discharges of wastewater to secondary containment units are to be due to *emergency events that are beyond the control of the Facility operator* and that the discharges to the secondary containment are *short term, limited duration, and cleaned up*."

60. We strongly oppose the addition of this section because it provides an opportunity for discharges to avoid Basin Plan water quality requirements.

61. We believe the way the Board position regarding CEQA is inappropriate, for the following reasons:

The Orders assert that all existing ponds are all categorically exempt, and for new ponds, the discharger must provide evidence of compliance with CEQA in the form of a certified EIR, Mitigated Negative Declaration, or Negative Declaration. For the latter, the Board should indicate who the lead agency would be in these cases. Is the Discharger complying with CEQA through a local government or through the Board?

For existing ponds, we strongly oppose their categorical exemption. The Board's "Response to Written Comments..." for the August 18 - 19 Board meeting says: "The inquiry (i.e. the July 11, 2016, Environmental Working Group et. al. comment letter) when

considering whether this exception to a categorical exclusion applies is whether the project presents 'unusual circumstances,' and if so, whether there is a reasonable possibility that a significant environmental impact will arise from the unusual circumstances. The discharge of oil field produced wastewater to land is one of several longstanding wastewater disposal methods that facilities in the Central Valley have employed. Therefore, Central Valley Water Board staff does not believe they present "unusual circumstances."

Our position is that "unusual circumstances" are demonstrated by the fact that these facilities, hundreds of which are operating without permits, did not undergo environmental reviews in the first place as they should have. In other words, that these facilities have had a "free pass" for decades constitutes "unusual circumstances."

Moreover, we strongly disagree with the following part of the Board's response: "Even if this industry practice constituted 'unusual circumstances,' there is not a reasonable possibility that a significant environmental impact will result." There is no rational basis for that statement and none was provided. Clearly, some of the existing facilities have impacts on the degraded air quality of Kern County due to emission of VOCs, and the cumulative impact on air and water from the discharges is not being addressed by the Orders. Also, water from some of the ponds is already reaching groundwater or will reach groundwater.

Indeed, whether or not an activity may have a significant effect due to unusual circumstances requires a case-by-case evaluation that is inappropriate for a General Order. As the court explained in *Azusa Land Reclamation C. v Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, the unusual circumstances exception to CEQA's categorical exemptions was adopted to allow agencies to determine which *specific activities*, within a class of activities that do not normally threaten the environment, should be excluded from the exemption and given further environmental evaluation. Under 14 Cal. Code Regs § 15300.2(c), an activity that would otherwise be subject to a categorical exemption is excluded from the exemption if "there is a *reasonable possibility* that the activity *will have* a significant effect on the environment *due to unusual circumstances*." (emphasis added.)

In *Azusa*, for example, a landfill was not eligible for the existing facilities exemption because it has been reclassified by new legislation, had potential for groundwater pollution, and had lacked appropriate environmental safeguards. *See also*, *McQueen v. Board of Dir.* (1988) 202 Cal.App.3d 1136, 1148 (presence of hazardous wastes on property was unusual circumstance precluding categorical exemption); *Lewis v. Seventeenth Dist. Agric. Ass'n* (1985) 165 Cal.App.3d (existing stock car racing fairgrounds ineligible for exemption due to proximity of residences). In sum, the lead agency must review the particular facts of each aspect of the project to determine

whether any unusual circumstances exist. Given the large number of facilities proposed to be covered by this General Order, such site specific inquiry is virtually impossible, and the Waterboard's claim of a categorical exemption therefore cannot be supported.

Discharge Specifications in General Order One

2. We recommend the expansion of this section to cover additional chemical constituents as recommended above for Sec 1.b. of General Order One.

   As noted in previous comments, we strongly oppose the deletion of criteria for not exceeding primary MCLs for organic chemicals. This weakens the General Order and there is no justification for doing so. The language from the previous version of General Orders should be reinserted.

   We strongly oppose the deletion of criteria for not exceeding oil and grease concentrations. This weakens the General Order and there is no justification for doing so. The language from the previous version of General Orders should be reinserted.

Provisions Section in General Order One

4. The italicized language from the previous version of the General Order should be reinserted to this section: "Discharges of wastes from oil field activities other than produced wastewater from production wells to land may be authorized by the Executive Officer if the Discharger can demonstrate with appropriate data and analyses that *the discharge of wastewater is similar, compatible, and better than the produced wastewater quality* and in addition the discharge does not pose a threat to beneficial uses of the groundwater."

7. The Task Description for how to deal with wastewater from stimulated wells should be amended to be consistent with SB 4 regulations and a prohibition on discharge of such wastes to land or pits.
   Task 1.a. should be removed.
   Task 1 should have a reduced Due Date of 30 days.
   Task 2 should be changed to reflect only the alternative discharge plan from Task 1 b. and the timeline should be reduced to 90 days. The Executive officer should not be permitted to extend this timeline.
   Task 3 due date should be changed to 90 days.

22. We strongly oppose this section, as noted in the comment referring to section 60 above.

General Order Two

1.b. The Board must not permit produced water that exceeds Basin Plan limits, or the chemical thresholds described above (in our recommendation for General Order 1), to be discharged onto land or into pits. This change would result in the orders being consistent with CCST's recommendation that produced water containing harmful chemicals not be stored or disposed of into unlined pits or discharged to land.

Dust control with contaminated wastewater must also be prohibited as it runs counter to the CCST recommendation and is not protective of the environment.

We recommend eliminating General Order Two and replacing it with a prohibition on discharge to land of any wastewater that does not meet the thresholds described above.

General Order Three

The order outlines a process for de-designating groundwater from beneficial uses. We agree that in order to claim that underlying groundwater is low quality this process must occur. We strongly object to operators being allowed to continue to discharge while that process is occurring. The timeline provided allows for up to five years of discharge before the denial of a de-designation application. The order must specify that no discharge can occur while the de-designation process is ongoing.

Provisions Section

In order for the table of tasks to be consistent with our recommendations above, we make the following changes.

Add to Task 1:

b. Operator must submit a report certifying that discharge has ceased and will not occur into the aquifer for which it is seeking de-designation and will not resume discharge until the de-designation has been granted. The report must specify the alternative disposal method(s) and location(s). Due date 30 days.

Monitoring and Reporting Program

In general, we support a scientifically justified and transparent Monitoring and Reporting Program. We believe the issues raised below run counter to that principle.

We strongly oppose the following: "The MRP can be modified if the Discharger provides sufficient data to support the proposed changes. If monitoring consistently shows no significant variation in magnitude of a constituent concentration or parameter after a statistically significant number of sampling events, the Discharger may request this MRP be revised by the Executive Officer to reduce monitoring frequency or minimize the list of constituents. The proposal must include adequate technical justification for reduction in monitoring frequency." This encourages operators to conduct less thorough monitoring and incentives not detecting problems. The option for reduced monitoring must be removed.

That concentrations of chemicals may be less than acceptable levels for a period of time, does not guarantee that they will be in the future. Therefore, the rigor of monitoring should not be weakened. This is supported by the following from the Information Sheet: "The individual groundwater monitoring provisions and requirements are designed to measure water quality data over time in first-encountered groundwater. It is recognized that *in many cases*, a single set of groundwater monitoring data, *or even monitoring data over a period of months or years, may not be sufficient to determine the effectiveness of existing wastewater discharge practices*. *Evaluating groundwater results over an extended period of time, in conjunction with gathering data regarding existing surface practices, is necessary to determine whether water quality is being protected or is being unreasonably impacted* (italics added)."

We oppose any claims of trade secret for added chemicals that would prevent the public from knowing the identities of every chemical that may be present in wastewater discharged to land. The Chemical and Additive Monitoring section must specify that an operator may not claim the identity, volume, concentration or frequency of use of a chemical as a trade secret if wastewater from that specific well is discharged to land. Once a discharge occurs, the claim of trade secret is invalid as that product is entering the environment. Just as an operator may not claim the test results from groundwater monitoring as a trade secret, information on added chemicals that are eventually discharged into the environment must be transparent and in the public domain.

Similarly, we oppose: "If the Discharger demonstrates that the wastes discharged to the ponds cannot affect the quality of underlying groundwater, the Executive Officer may rescind by signed letter all or part of the requirements to complete the groundwater investigation and groundwater monitoring portions of this Order." How demonstrating that discharged wastes "cannot affect the quality of underlying groundwater" is undefined and therefore ripe for abuse. This passage should be deleted.

Groundwater Monitoring System Section of MRP

Until a groundwater monitoring system is approved and fully functional, discharge must cease. The Task Table should be amended to include:

Task 1. a. Operator must submit a report certifying that discharge has ceased and will not occur at the facility until the monitoring system is implemented. The report must specify the alternative disposal method(s) and location(s) Due date 30 days.

Thank you for the opportunity to provide comments. We look forward to your responses.

Sincerely,

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